

Message Text

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E.O. 11652, N/A

TAGS: PFOR, PGOV, BF

SUBJECT; VESCO EXTRADITION

REF: NASSAU 1692

1. SUMMARY. REFTEL INDICATED THAT ONE DEFENSE ALLEGATION IN EXTRADITION PROCEEDINGS MAY BE THAT, SINCE VESCO HAS BEEN INDICTED THREE TIMES AND CHARGE UPON WHICH HIS EXTRADITION IS SOUGHT IS RELATIVELY LESS SERIOUS THAN BASIC CONSPIRACY CHARGE AND SEC LITIGATION, EXTRADITION IS BEING USED AS SUBTERFUGE TO OBTAIN HIS RETURN FOR PURPOSES OF THAT OTHER LITIGATION. THIS WOULD BE AN ISSUE UNDER ARTICLE 7 OF U.S.-U.K. EXTRADITION TREATY AND EXTRADITION QTE RULE OF SPECIALITY UNQTE. UNDER U.S. LAW AND TREATY VESCO COULD NOT BE PROSECUTED FOR ANY PRIOR OFFENSE OTHER THAN THAT FOR WHICH EXTRADITED BUT WOULD BE SUBJECT TO U.S. JURISDICTION FOR SUCH PURPOSES AS GIVING TESTIMONY. ALTHOUGH TERMS OF TREATY NOT COMPLETELY CLEAR, SOUND ARGUMENTS CAN BE MADE THAT COMPULSION OF TESTIMONY BY COURTS SHOULD NOT BE CONSIDERED AS VIOLATION OF DOCTRINE OF SPECIALITY.

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2. PURPOSE OF THIS MESSAGE IS TO PROVIDE DEPARTMENT GUIDANCE ON APPLICATION OF EXTRADITION QTE RULE OF SPECIALITY UNQTE, INCORPORATED IN ARTICLE 7 OF U.S.-U.K. EXTRADITION TREATY, TO CIRCUMSTANCES OF VESCO CASE. THIS

IS IN ANTICIPATION THAT VESCO DEFENSE MAY ATTACK EXTRA-
DITION PROCEEDING AS AN ATTEMPT THROUGH PRESSING WIRE
FRAUD CHARGE TO OBTAIN VESCO'S RETURN TO FACE OTHER TWO
CHARGES OUTSTANDING, PERHAPS OTHERS WHICH MAY BE BROUGHT,
AND EVEN SEC LITIGATION OVER IOS EMPIRE.

3. ARTICLE 7 PROVIDES IN PERTINENT PART THAT PERSON
SURRENDERED IN EXTRADITION CAN IN NO CASE BE KEPT IN
CUSTODY OR BE BROUGHT TO TRIAL IN TERRITORIES OF STATE
TO WHICH SURRENDERED QTE FOR ANY OTHER CRIME OR OFFENCE,
OR ON ACCOUNT OF ANY OTHER MATTERS, THAN THOSE FOR WHICH
THE EXTRADITION SHALL HAVE TAKEN PLACE UNQTE. FIRST POINT
TO BE MADE IS THAT THIS ARTICLE IS NOT A DEFENSE TO
EXTRADITION BUT AN OBLIGATION RUNNING FROM THE UNITED
STATES TO THE GOBI THAT, AFTER EXTRADITION, VESCO WILL
NOT BE PLACED IN CUSTODY OR TRIED ON ACCOUNT OF ANY
OFFENSE OR OTHER MATTER THAN THAT FOR WHICH HE HAS BEEN
EXTRADITED. TREATY OBLIGATION IN U.S. IS REINFORCED BY
UNITED STATES COURT DECISIONS OF JOHNSON V. BROWNE, 205
U.S. 309 (1907), UNITED STATES V. RAUSCHER, 119 U.S. 407
(1886) AND EX PARTE HIBBS, 26 FED. 421 (1886). THIS
PROHIBITION APPLIES TO THE SEVERAL STATES OF THE UNITED
STATES AS WELL AS THE FEDERAL GOVERNMENT. CANADIAN
JUDGE IN ONE CASE REJECTED THE FUGITIVE'S OBJECTIONS TO
EXTRADITION ON THE BASIS OF THE UNITED STATES TREATY
OBLIGATION AND THE UNITED STATES LAW. SEE DISCUSSION
IN VOLUME 6 WHITEMAN'S DIGEST OF INTERNATIONAL LAW
PAGES 1095 AND FOLLOWING.

4. PERHAPS MORE DIFFICULT QUESTIONS, BUT AGAIN NOT
OBSTACLES TO EXTRADITION, ARE RAISED BY REFERENCE IN
ARTICLE 7 TO BEING PLACED IN CUSTODY ON ACCOUNT OF
ANOTHER MATTER. WE DO NOT HAVE ANY PRECEDENTS AS TO
MEANING OF THIS PROVISION OF UK TREATY, BUT OBVIOUSLY
ARGUMENT COULD BE MADE THAT, IN ADDITION TO BARRING
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CRIMINAL PROSECUTION OR ARREST ON OTHER CHARGES, ARTICLE
7 PREVENTS VESCO BEING KEPT OR PLACED IN CUSTODY IN
CONNECTION WITH TESTIMONY SOUGHT IN OTHER LITIGATION.
THIS MIGHT INVOLVE EITHER SUMMONS TO APPEAR AND GIVE
TESTIMONY, WHICH IS UNDER COURT COMPULSION, OR CONTEMPT
CITATION FOR REFUSAL TO ANSWER PARTICULAR QUESTIONS.
EITHER OR BOTH ARE NOT UNLIKELY TO RESULT SINCE, UNDER
UNITED STATES LAW, VESCO WOULD BE SUBJECT TO JURISDICTION
OF US COURTS ONCE HERE, EXCEPT AS RESTRICTED BY TREATY.
VESCO, OF COURSE, WOULD HAVE AN OPPORTUNITY TO ARGUE
BEFORE OUR COURTS THAT ARTICLE 7 DID PREVENT THEM FROM
COMPELLING APPEARANCE OR ANSWERS TO PARTICULAR QUESTIONS,
AND GOBI COULD ALSO MAKE REPRESENTATIONS ON A GOVERNMENT

TO GOVERNMENT BASIS. WE DO NOT BELIEVE THAT IT WAS

INTENT OF THIS PROVISION TO DEPRIVE COURTS OF THEIR
NORMAL TOOLS TO GET AT THE TRUTH, SO THAT, FOR EXAMPLE,
VESCO IN HIS TRIAL UPON THE CHARGES FOR WHICH EXTRADITED,
WOULD NOT BE IMMUNE FROM CRIMINAL CONTEMPT FOR OUTRAGEOUS
BEHAVIOR IN COURT OR FROM PENALTIES FROM VIOLATION OF
BOND (SHOULD THAT BE GRANTED). ARTICLE 7 IS NOT APPLIC-
ABLE BY ITS TERMS TO OFFENSES COMMITTED AFTER EXTRADITION
HAS BEEN GRANTED.

5. SHOULD GOBI AUTHORITIES INQUIRE, THEREFORE, ABOUT
WHETHER VESCO COULD BE COMPELLED TO GIVE EVIDENCE IN
SEC CASE OR OTHER CRIMINAL CASES, ANSWER COULD BE
AFFIRMATIVE BUT WITH STATEMENT THAT ARTICLE 7 PROVIDES
TO VESCO DIRECTLY AND TO GOBI GOVERNMENT TO GOVERNMENT
AGREEMENT AND RIGHT RECOGNIZED BY OUR COURTS WHICH
PROTECTS VESCO AGAINST ABUSE OF UNITED STATES JURIS-
DICTION TO PUNISH HIM FOR OFFENSES OTHER THAN THAT FOR
WHICH EXTRADITION GRANTED.

6. ALTHOUGH US DECLINED TO REPEAT ASSURANCES PROVIDED IN
TREATY IN CANADIAN CASE CITED IN PARA 3 ABOVE, WE SEE
NO HARM IN ASSURING GOBI THAT USG WILL MEET ITS TREATY
COMMITMENTS. IN SPECIAL CIRCUMSTANCES HERE SUCH
ASSURANCES MAY FACILITATE EXTRADITION AND AVOID
UNNECESSARY ISSUES IN U.S.-BAHAMIAN RELATIONS. RUSH

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